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RHEHNSC/NATIONAL SECURITY COUNCIL WASHINGTON DC IMMEDIATE  
RUEKJCS/SECDEF WASHINGTON DC IMMEDIATE  
RUEHNO/USMISSION USNATO IMMEDIATE 5708  
RHMFISS/DEPT OF ENERGY WASHINGTON DC IMMEDIATE  
RHMFISS/DTRA ALEX WASHINGTON DC IMMEDIATE  
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RUENAAA/CNO WASHINGTON DC IMMEDIATE  
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DEPT FOR T, VCI AND EUR/PRA  
DOE FOR NNSA/NA-24  
CIA FOR WINPAC  
JCS FOR J5/DDGSA  
SECDEF FOR OSD(P)/STRATCAP  
NAVY FOR CNO-N5JA AND DIRSSP  
AIRFORCE FOR HQ USAF/ASX AND ASXP  
DTRA FOR OP-OS OP-OSA AND DIRECTOR  
NSC FOR LOOK  
DIA FOR LEA

E.O. 12958: DECL: 12/09/2019  
TAGS: [KACT](#) [MARR](#) [PARM](#) [PREL](#) [RS](#) [US](#) [START](#)  
SUBJECT: START FOLLOW-ON NEGOTIATIONS, GENEVA  
(SFO-GVA-VII): (U) LAWYERS' MEETING ON PROVISIONAL  
APPLICATION, DECEMBER 2, 2009

Classified By: A/S Rose E. Gottemoeller, United States  
START Negotiator. Reasons: 1.4(b) and (d).

1. (U) This is SFO-GVA-VII-082.
2. (U) Meeting Date: December 2, 2009  
Time: 11:30 a.m. - 12:00 p.m.  
Place: U.S. Mission, Geneva

Participants:

U.S.	RUSSIA
Mr. Highsmith	Mr. Lobach Ms. Melikbekian

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SUMMARY  
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13. (S) Mr. Highsmith met with Russian lawyers Mr. Lobach and Ms. Melikbekian to provide a non-paper with a notional approach to provisional application of selected verification provisions of the treaty pending its entry-into-force (EIF). Lobach indicated that this approach appeared to be legally viable, but added that he would have to discuss the approach with the Russian delegation since it would be a policy decision whether, and to what extent, to provisionally apply treaty provisions. End Summary.

14. (S) SUBJECT SUMMARY: Discussion of Provisional Application.

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DISCUSSION OF PROVISIONAL APPLICATION  
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15. (S) Highsmith provided to Russian lawyers Lobach and Melikbekian the non-paper at paragraph 8 on a notional approach to provisional application of selected treaty provisions pending the treaty's EIF. He explained that this approach had three elements: a Protocol provision specifying the articles to be provisionally applied; a new paragraph for the Russian-proposed treaty Article IX (on voluntary transparency measures) that would allow each party to request up to five transparency visits per year; and a political commitment by the two sides to consent to such requests for transparency visits prior to EIF of the treaty. He further explained that the new treaty paragraph on transparency visits would still apply after EIF of the treaty, but would not at any time impose an obligation to accede to requests for such visits.

16. (S) Lobach replied that this approach appeared to address the Russian inability to include substantive language on transparency visits in the provisional application provision

itself (which was based on the Russian view that such language created "interim measures" as opposed to provisional application). He noted that the U.S. side had not included in the list of articles to be provisionally applied the new paragraph of Article IX regarding transparency visits (Highsmith acknowledged the oversight) and also indicated that the phrase "intention to consent" might have to be

softened. He indicated that this approach, in general, did not present legal problems, but would have to be considered as a policy matter.

17. (S) In closing, Lobach asked whether this non-paper represented a U.S. proposal. Highsmith responded that the U.S. side was proposing provisional application in principle, including a mechanism for transparency visits during the period of provisional application, but that the list of treaty articles and Protocol parts was of course notional at this time and would require careful consideration as the relevant articles and parts are negotiated.

18. (S) Begin text:

U.S. Non Paper  
December 2, 2009

- PROTOCOL TO THE TREATY

- PART EIGHT - PROVISIONAL APPLICATION

1. The Parties agree to apply the following provisions of the Treaty and this Protocol provisionally from the date of signature of the Treaty pending the entry into force of the Treaty.

(a) Treaty Articles  
(i) paragraphs of Article VIII (Database and notifications)  
(ii) paragraphs of Article (IX)1 (X)2 (noninterference with NTM)  
(iii) paragraphs of Article (X)1 (telemetry)  
(iv) Article (XIII)1 (XII)2 (BCC)  
(v) paragraph 2 of Article (XVI)1 (XIV)2 (Viability and effectiveness changes).  
(b) Protocol  
(i) Part One (Terms and Their Definitions)  
(ii) The following portions of Part Two (Database):  
(iii) The following portions of Part Four (Notifications):  
(iv) Part Six (Bilateral Consultative Commission)  
(v) The following portions of Part Seven (Telemetry)  
(vi) The following portions of Part Nine (General Provisions)

- TREATY ARTICLE IX

1. ((In order to ensure the viability and effectiveness of this Treaty, and to enhance confidence, openness, and predictability concerning the reduction and limitation of strategic offensive arms, each Party shall, on a voluntary basis, in those cases where it believes ambiguous situations might arise, take measures, including providing information in advance, inter alia through diplomatic channels, on activities being conducted with respect to strategic offensive arms, which are associated with their deployment or increasing readiness, so as to preclude the possibility of misinterpretation of its actions by the other Party.)) ((Proposed by Russian Federation))

2. ((Each Party shall have the right to request to conduct up to a total of five (5) visits every year at ICBM bases,

submarine bases, and air bases for the purpose of promoting transparency regarding the ICBMs, SLBMs, mobile launchers of ICBMs, or heavy bombers located at such facilities, hereinafter referred to as transparency visits. The procedures for conducting such transparency visits shall be subject to agreement by the Parties.)) ((Proposed by United States))

DRAFT POLITICAL COMMITMENT

((To be executed at signature of the Treaty, format to be determined (e.g., joint statement, exchange of notes)) Mindful of the importance of promoting transparency pending entry into force of the Treaty Between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (hereinafter "the Treaty"), the United States of America and the Russian Federation express their intention to consent to requests to conduct transparency visits in accordance with Article IX, paragraph 2, of the Treaty prior to entry into force of the Treaty and to facilitate the conduct of such transparency visits. Further, the United States of America and the Russian Federation express their intention that the following procedures should apply to such transparency visits:

1. The visiting team would consist of no more than eight persons to be determined through consultations between the

requesting State and the hosting State, with reference as appropriate to the list of inspectors under this Treaty or to the list of inspectors under the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, signed at Moscow on July 31, 1991 ("START"), prior to its expiration.

12. The names of these persons would be provided to the hosting State no less than ten days in advance of their arrival at the point of entry into the hosting State.

13. The hosting State would provide visas and, where necessary, such other documents as may be required to ensure that these persons may enter and remain in its territory throughout the in-country period.

14. The hosting State would treat with due respect these persons while in its territory in connection with the conduct of transparency visits and would take appropriate steps to prevent any attack on the person, freedom, and dignity of these persons.

Other procedures regarding duration, equipment, and logistics may be determined through consultations between the requesting State and the hosting State. End Text.

19. (U) Documents provided: As contained in Paragraph 8.

110. (U) Gottemoeller sends.  
GRIFFITHS